

1 Les W. Robertson (SBN 140796)
2 Robertson & Associates, APC
3 655 West Broadway, Suite 1410
4 San Diego, CA 92101
5 Tel: (619) 531-7000
6 Fax: (619) 531-7007

7 Konrad Sherinian (*Pro Hac Vice*)
8 The Law Offices of Konrad Sherinian, LLC
9 1755 Park Street, Suite 200
10 Naperville, IL 60563
11 Tel: (630) 318-2606
12 Fax: (630) 318-2605

13 David Lesht
14 The Law Offices of Eugene M. Cummings PC
15 1 N. Wacker Drive, Suite 4130
16 Chicago, IL 60606
17 Tel: (312) 984-0144
18 Fax: (312) 984-0146

19 Attorneys for Defendant GrubHub, Inc.

20 UNITED STATES DISTRICT COURT
21 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

22 AMERANTH, INC.

23 Plaintiff,

24 v.

25 PIZZA HUT, INC., PIZZA HUT OF
26 AMERICA, INC., DOMINO'S PIZZA, LLC,
27 DOMINO'S PIZZA, INC., PAPA JOHN'S
28 USA, INC., OPENTABLE, INC.,
GRUBHUB, INC., SEALESS NORTH
AMERICA, LLC AND O-WEB
TECHNOLOGIES, LTD.,

Defendants.

Case No.: 11 CV1810 JLS NLS

[Complaint filed August 15, 2011]

**GRUBHUB, INC.'S FIRST AMENDED
ANSWER TO SECOND AMENDED
COMPLAINT, AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS**

[Demand for Jury Trial]

Defendant GRUBHUB, INC. (hereinafter "GrubHub") for itself only and by and through its counsel of record, answers each of the numbered paragraphs of Plaintiff Ameranth, Inc.'s ("Ameranth") Second Amended Complaint for Patent Infringement as follows:

///

PARTIES

1
2 1. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 1 of the Second Amended Complaint, and therefore denies
4 the same.

5 2. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 2 of the Second Amended Complaint, and therefore denies
7 the same.

8 3. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 3 of the Second Amended Complaint, and therefore denies
10 the same.

11 4. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 4 of the Second Amended Complaint, and therefore denies
13 the same.

14 5. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 5 of the Second Amended Complaint, and therefore denies
16 the same.

17 6. GrubHub denies the allegations of Paragraph 6 of the Second Amended Complaint
18 except to admit that GrubHub is a Delaware corporation and has a principle place of business in
19 Chicago, Illinois.

20 7. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 7 of the Second Amended Complaint, and therefore denies
22 the same.

23 8. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 8 of the Second Amended Complaint, and therefore denies
25 the same.

26 9. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 9 of the Second Amended Complaint, and therefore denies
28 the same.

10. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 10 of the Second Amended Complaint, and therefore denies the same.

11. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 11 of the Second Amended Complaint, and therefore denies the same.

JURISDICTION AND VENUE

12. GrubHub admits the Second Amended Complaint purports to state a cause of action for patent infringement pursuant to 35 U.S.C. §§ 271, 281-285.

13. GrubHub admits that the Court has subject matter jurisdiction over causes of action for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

14. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 14 of the Second Amended Complaint, and therefore denies the same.

15. GrubHub admits the Court has personal jurisdiction over them. The remaining allegations are denied.

16. GrubHub admits venue is proper pursuant to 28 U.S.C. §§ 1331 and 1338(a).

BACKGROUND

17. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 17 of the Second Amended Complaint, and therefore denies the same.

18. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 18 of the Second Amended Complaint, and therefore denies the same.

19. GrubHub is without sufficient knowledge or information to form a belief as to the allegations contained in Paragraph 19 of the Second Amended Complaint, and therefore denies the same.

20. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 20 of the Second Amended Complaint, and therefore denies
2 the same.

3 **COUNT 1**

4 **Patent Infringement (U.S. Pat. No. 6,384,850)**

5 **(35 U.S.C. §271)**

6 21. GrubHub hereby incorporates its responses to the allegations set forth in
7 paragraphs 1 – 20.

8 22. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 22 of the Second Amended Complaint and therefore denies the
10 same.

11 23. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 23 of the Second Amended Complaint and therefore denies the
13 same.

14 24. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 24 of the Second Amended Complaint and therefore denies the
16 same.

17 25. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 25 of the Second Amended Complaint and therefore denies the
19 same.

20 26. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 26 of the Second Amended Complaint and therefore denies the
22 same.

23 27. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 27 of the Second Amended Complaint and therefore denies the
25 same.

26 28. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 28 of the Second Amended Complaint and therefore denies the
28 same.

1 29. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 29 of the Second Amended Complaint and therefore denies the
3 same.

4 30. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 30 of the Second Amended Complaint and therefore denies the
6 same.

7 31. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 31 of the Second Amended Complaint and therefore denies the
9 same.

10 32. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 32 of the Second Amended Complaint and therefore denies the
12 same.

13 33. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 33 of the Second Amended Complaint and therefore denies the
15 same.

16 34. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 34 of the Second Amended Complaint and therefore denies the
18 same.

19 35. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 35 of the Second Amended Complaint and therefore denies the
21 same.

22 36. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 36 of the Second Amended Complaint and therefore denies the
24 same.

25 37. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 37 of the Second Amended Complaint and therefore denies the
27 same.

28 38. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 38 of the Second Amended Complaint and therefore denies the
2 same.

3 39. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 39 of the Second Amended Complaint and therefore denies the
5 same.

6 40. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 40 of the Second Amended Complaint and therefore denies the
8 same.

9 41. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 41 of the Second Amended Complaint and therefore denies the
11 same.

12 42. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 42 of the Second Amended Complaint and therefore denies the
14 same.

15 43. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 43 of the Second Amended Complaint and therefore denies the
17 same.

18 44. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 44 of the Second Amended Complaint and therefore denies the
20 same.

21 45. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 45 of the Second Amended Complaint and therefore denies the
23 same.

24 46. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 46 of the Second Amended Complaint and therefore denies the
26 same.

27 47. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 47 of the Second Amended Complaint and therefore denies the

1 same.

2 48. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 48 of the Second Amended Complaint and therefore denies the
4 same.

5 49. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 49 of the Second Amended Complaint and therefore denies the
7 same.

8 50. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 50 of the Second Amended Complaint and therefore denies the
10 same.

11 51. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 51 of the Second Amended Complaint and therefore denies the
13 same.

14 52. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 52 of the Second Amended Complaint and therefore denies the
16 same.

17 53. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 53 of the Second Amended Complaint and therefore denies the
19 same.

20 54. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 54 of the Second Amended Complaint and therefore denies the
22 same.

23 55. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 55 of the Second Amended Complaint and therefore denies the
25 same.

26 56. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 56 of the Second Amended Complaint and therefore denies the
28 same.

1 57. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 57 of the Second Amended Complaint and therefore denies the
3 same.

4 58. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 58 of the Second Amended Complaint and therefore denies the
6 same.

7 59. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 59 of the Second Amended Complaint and therefore denies the
9 same.

10 60. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 60 of the Second Amended Complaint and therefore denies the
12 same.

13 61. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 61 of the Second Amended Complaint and therefore denies the
15 same.

16 62. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 62 of the Second Amended Complaint and therefore denies the
18 same.

19 63. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 63 of the Second Amended Complaint and therefore denies the
21 same.

22 64. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 64 of the Second Amended Complaint and therefore denies the
24 same.

25 65. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 65 of the Second Amended Complaint and therefore denies the
27 same.

28 66. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 66 of the Second Amended Complaint and therefore denies the
2 same.

3 67. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 67 of the Second Amended Complaint and therefore denies the
5 same.

6 68. GrubHub denies the allegations of Paragraph 68 of the Second Amended
7 Complaint.

8 69. GrubHub denies the allegations of Paragraph 69 of the Second Amended
9 Complaint.

10 70. GrubHub denies the allegations of Paragraph 70 of the Second Amended
11 Complaint.

12 71. GrubHub denies the allegations of Paragraph 71 of the Second Amended
13 Complaint.

14 72. GrubHub denies the allegations of Paragraph 72 of the Second Amended
15 Complaint.

16 73. GrubHub denies the allegations of Paragraph 73 of the Second Amended
17 Complaint.

18 74. GrubHub denies the allegations of Paragraph 74 of the Second Amended
19 Complaint.

20 75. GrubHub denies the allegations of Paragraph 75 of the Second Amended
21 Complaint.

22 76. GrubHub denies the allegations of Paragraph 76 of the Second Amended
23 Complaint.

24 77. GrubHub denies the allegations of Paragraph 77 of the Second Amended
25 Complaint.

26 78. GrubHub denies the allegations of Paragraph 78 of the Second Amended
27 Complaint.

28 79. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 79 of the Second Amended Complaint and therefore denies the
2 same.

3 80. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 80 of the Second Amended Complaint and therefore denies the
5 same.

6 81. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 81 of the Second Amended Complaint and therefore denies the
8 same.

9 82. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 82 of the Second Amended Complaint and therefore denies the
11 same.

12 83. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 83 of the Second Amended Complaint and therefore denies the
14 same.

15 84. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 84 of the Second Amended Complaint and therefore denies the
17 same.

18 85. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 85 of the Second Amended Complaint and therefore denies the
20 same.

21 86. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 86 of the Second Amended Complaint and therefore denies the
23 same.

24 87. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 87 of the Second Amended Complaint and therefore denies the
26 same.

27 88. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 88 of the Second Amended Complaint and therefore denies the

1 same.

2 89. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 89 of the Second Amended Complaint and therefore denies the
4 same.

5 90. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 90 of the Second Amended Complaint and therefore denies the
7 same.

8 91. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 91 of the Second Amended Complaint and therefore denies the
10 same.

11 92. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 92 of the Second Amended Complaint and therefore denies the
13 same.

14 93. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 93 of the Second Amended Complaint and therefore denies the
16 same.

17 94. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 94 of the Second Amended Complaint and therefore denies the
19 same.

20 95. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 95 of the Second Amended Complaint and therefore denies the
22 same.

23 96. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 96 of the Second Amended Complaint and therefore denies the
25 same.

26 97. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 97 of the Second Amended Complaint and therefore denies the
28 same.

1 98. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 98 of the Second Amended Complaint and therefore denies the
3 same.

4 99. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 99 of the Second Amended Complaint and therefore denies the
6 same.

7 100. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 100 of the Second Amended Complaint and therefore denies
9 the same.

10 101. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 101 of the Second Amended Complaint and therefore denies
12 the same.

13 102. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 102 of the Second Amended Complaint and therefore denies
15 the same.

16 103. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 103 of the Second Amended Complaint and therefore denies
18 the same.

19 104. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 104 of the Second Amended Complaint and therefore denies
21 the same.

22 105. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 105 of the Second Amended Complaint and therefore denies
24 the same.

25 106. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 106 of the Second Amended Complaint and therefore denies
27 the same.

28 107. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 107 of the Second Amended Complaint and therefore denies
2 the same.

3 108. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 108 of the Second Amended Complaint and therefore denies
5 the same.

6 109. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 109 of the Second Amended Complaint and therefore denies
8 the same.

9 110. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 110 of the Second Amended Complaint and therefore denies
11 the same.

12 111. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 111 of the Second Amended Complaint and therefore denies
14 the same.

15 112. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 112 of the Second Amended Complaint and therefore denies
17 the same.

18 113. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 113 of the Second Amended Complaint and therefore denies
20 the same.

21 114. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 114 of the Second Amended Complaint and therefore denies
23 the same.

24 115. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 115 of the Second Amended Complaint and therefore denies
26 the same.

27 116. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 116 of the Second Amended Complaint and therefore denies

1 the same.

2 117. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 117 of the Second Amended Complaint and therefore denies
4 the same.

5 118. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 118 of the Second Amended Complaint and therefore denies
7 the same.

8 119. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 119 of the Second Amended Complaint and therefore denies
10 the same.

11 120. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 120 of the Second Amended Complaint and therefore denies
13 the same.

14 121. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 121 of the Second Amended Complaint and therefore denies
16 the same.

17 122. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 122 of the Second Amended Complaint and therefore denies
19 the same.

20 123. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 123 of the Second Amended Complaint and therefore denies
22 the same.

23 124. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 124 of the Second Amended Complaint and therefore denies
25 the same.

26 125. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 125 of the Second Amended Complaint and therefore denies
28 the same.

1 paragraphs 1 – 133.

2 135. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 135 of the Second Amended Complaint and therefore denies
4 the same.

5 136. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 136 of the Second Amended Complaint and therefore denies
7 the same.

8 137. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 137 of the Second Amended Complaint and therefore denies
10 the same.

11 138. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 138 of the Second Amended Complaint and therefore denies
13 the same.

14 139. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 139 of the Second Amended Complaint and therefore denies
16 the same.

17 140. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 140 of the Second Amended Complaint and therefore denies
19 the same.

20 141. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 141 of the Second Amended Complaint and therefore denies
22 the same.

23 142. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 142 of the Second Amended Complaint and therefore denies
25 the same.

26 143. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 143 of the Second Amended Complaint and therefore denies
28 the same.

1 144. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 144 of the Second Amended Complaint and therefore denies
3 the same.

4 145. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 145 of the Second Amended Complaint and therefore denies
6 the same.

7 146. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 146 of the Second Amended Complaint and therefore denies
9 the same.

10 147. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 147 of the Second Amended Complaint and therefore denies
12 the same.

13 148. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 148 of the Second Amended Complaint and therefore denies
15 the same.

16 149. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 149 of the Second Amended Complaint and therefore denies
18 the same.

19 150. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 150 of the Second Amended Complaint and therefore denies
21 the same.

22 151. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 151 of the Second Amended Complaint and therefore denies
24 the same.

25 152. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 152 of the Second Amended Complaint and therefore denies
27 the same.

28 153. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 153 of the Second Amended Complaint and therefore denies
2 the same.

3 154. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 154 of the Second Amended Complaint and therefore denies
5 the same.

6 155. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 155 of the Second Amended Complaint and therefore denies
8 the same.

9 156. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 156 of the Second Amended Complaint and therefore denies
11 the same.

12 157. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 157 of the Second Amended Complaint and therefore denies
14 the same.

15 158. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 158 of the Second Amended Complaint and therefore denies
17 the same.

18 159. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 159 of the Second Amended Complaint and therefore denies
20 the same.

21 160. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 160 of the Second Amended Complaint and therefore denies
23 the same.

24 161. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 161 of the Second Amended Complaint and therefore denies
26 the same.

27 162. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 162 of the Second Amended Complaint and therefore denies

1 the same.

2 163. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 163 of the Second Amended Complaint and therefore denies
4 the same.

5 164. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 164 of the Second Amended Complaint and therefore denies
7 the same.

8 165. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 165 of the Second Amended Complaint and therefore denies
10 the same.

11 166. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 166 of the Second Amended Complaint and therefore denies
13 the same.

14 167. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 167 of the Second Amended Complaint and therefore denies
16 the same.

17 168. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 168 of the Second Amended Complaint and therefore denies
19 the same.

20 169. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 169 of the Second Amended Complaint and therefore denies
22 the same.

23 170. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 170 of the Second Amended Complaint and therefore denies
25 the same.

26 171. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 171 of the Second Amended Complaint and therefore denies
28 the same.

1 172. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 172 of the Second Amended Complaint and therefore denies
3 the same.

4 173. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 173 of the Second Amended Complaint and therefore denies
6 the same.

7 174. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 174 of the Second Amended Complaint and therefore denies
9 the same.

10 175. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 175 of the Second Amended Complaint and therefore denies
12 the same.

13 176. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 176 of the Second Amended Complaint and therefore denies
15 the same.

16 177. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 177 of the Second Amended Complaint and therefore denies
18 the same.

19 178. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 178 of the Second Amended Complaint and therefore denies
21 the same.

22 179. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 179 of the Second Amended Complaint and therefore denies
24 the same.

25 180. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 180 of the Second Amended Complaint and therefore denies
27 the same.

28 181. GrubHub denies the allegations of Paragraph 181 of the Second Amended

1 Complaint.

2 182. GrubHub denies the allegations of Paragraph 182 of the Second Amended
3 Complaint.

4 183. GrubHub denies the allegations of Paragraph 183 of the Second Amended
5 Complaint.

6 184. GrubHub denies the allegations of Paragraph 184 of the Second Amended
7 Complaint.

8 185. GrubHub denies the allegations of Paragraph 185 of the Second Amended
9 Complaint.

10 186. GrubHub denies the allegations of Paragraph 186 of the Second Amended
11 Complaint.

12 187. GrubHub denies the allegations of Paragraph 187 of the Second Amended
13 Complaint.

14 188. GrubHub denies the allegations of Paragraph 188 of the Second Amended
15 Complaint.

16 189. GrubHub denies the allegations of Paragraph 189 of the Second Amended
17 Complaint.

18 190. GrubHub denies the allegations of Paragraph 190 of the Second Amended
19 Complaint.

20 191. GrubHub denies the allegations of Paragraph 191 of the Second Amended
21 Complaint.

22 192. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 192 of the Second Amended Complaint and therefore denies
24 the same.

25 193. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 193 of the Second Amended Complaint and therefore denies
27 the same.

28 194. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 194 of the Second Amended Complaint and therefore denies
2 the same.

3 195. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 195 of the Second Amended Complaint and therefore denies
5 the same.

6 196. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 196 of the Second Amended Complaint and therefore denies
8 the same.

9 197. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 197 of the Second Amended Complaint and therefore denies
11 the same.

12 198. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 198 of the Second Amended Complaint and therefore denies
14 the same.

15 199. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 199 of the Second Amended Complaint and therefore denies
17 the same.

18 200. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 200 of the Second Amended Complaint and therefore denies
20 the same.

21 201. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 201 of the Second Amended Complaint and therefore denies
23 the same.

24 202. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 202 of the Second Amended Complaint and therefore denies
26 the same.

27 203. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 203 of the Second Amended Complaint and therefore denies

1 the same.

2 204. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 204 of the Second Amended Complaint and therefore denies
4 the same.

5 205. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 205 of the Second Amended Complaint and therefore denies
7 the same.

8 206. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 206 of the Second Amended Complaint and therefore denies
10 the same.

11 207. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 207 of the Second Amended Complaint and therefore denies
13 the same.

14 208. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 208 of the Second Amended Complaint and therefore denies
16 the same.

17 209. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 209 of the Second Amended Complaint and therefore denies
19 the same.

20 210. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 210 of the Second Amended Complaint and therefore denies
22 the same.

23 211. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 211 of the Second Amended Complaint and therefore denies
25 the same.

26 212. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 212 of the Second Amended Complaint and therefore denies
28 the same.

1 213. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 213 of the Second Amended Complaint and therefore denies
3 the same

4 214. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 214 of the Second Amended Complaint and therefore denies
6 the same.

7 215. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 215 of the Second Amended Complaint and therefore denies
9 the same.

10 216. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 216 of the Second Amended Complaint and therefore denies
12 the same.

13 217. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 217 of the Second Amended Complaint and therefore denies
15 the same.

16 218. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 218 of the Second Amended Complaint and therefore denies
18 the same.

19 219. GrubHub is without sufficient knowledge or information to form a belief as to the
20 allegations contained in Paragraph 219 of the Second Amended Complaint and therefore denies
21 the same.

22 220. GrubHub is without sufficient knowledge or information to form a belief as to the
23 allegations contained in Paragraph 220 of the Second Amended Complaint and therefore denies
24 the same.

25 221. GrubHub is without sufficient knowledge or information to form a belief as to the
26 allegations contained in Paragraph 221 of the Second Amended Complaint and therefore denies
27 the same.

28 222. GrubHub is without sufficient knowledge or information to form a belief as to the

1 allegations contained in Paragraph 222 of the Second Amended Complaint and therefore denies
2 the same.

3 223. GrubHub is without sufficient knowledge or information to form a belief as to the
4 allegations contained in Paragraph 223 of the Second Amended Complaint and therefore denies
5 the same.

6 224. GrubHub is without sufficient knowledge or information to form a belief as to the
7 allegations contained in Paragraph 224 of the Second Amended Complaint and therefore denies
8 the same.

9 225. GrubHub is without sufficient knowledge or information to form a belief as to the
10 allegations contained in Paragraph 225 of the Second Amended Complaint and therefore denies
11 the same.

12 226. GrubHub is without sufficient knowledge or information to form a belief as to the
13 allegations contained in Paragraph 226 of the Second Amended Complaint and therefore denies
14 the same.

15 227. GrubHub is without sufficient knowledge or information to form a belief as to the
16 allegations contained in Paragraph 227 of the Second Amended Complaint and therefore denies
17 the same.

18 228. GrubHub is without sufficient knowledge or information to form a belief as to the
19 allegations contained in Paragraph 228 of the Second Amended Complaint and therefore denies
20 the same.

21 229. GrubHub is without sufficient knowledge or information to form a belief as to the
22 allegations contained in Paragraph 229 of the Second Amended Complaint and therefore denies
23 the same.

24 230. GrubHub is without sufficient knowledge or information to form a belief as to the
25 allegations contained in Paragraph 230 of the Second Amended Complaint and therefore denies
26 the same.

27 231. GrubHub is without sufficient knowledge or information to form a belief as to the
28 allegations contained in Paragraph 231 of the Second Amended Complaint and therefore denies

1 the same.

2 232. GrubHub is without sufficient knowledge or information to form a belief as to the
3 allegations contained in Paragraph 232 of the Second Amended Complaint and therefore denies
4 the same.

5 233. GrubHub is without sufficient knowledge or information to form a belief as to the
6 allegations contained in Paragraph 233 of the Second Amended Complaint and therefore denies
7 the same.

8 234. GrubHub is without sufficient knowledge or information to form a belief as to the
9 allegations contained in Paragraph 234 of the Second Amended Complaint and therefore denies
10 the same.

11 235. GrubHub is without sufficient knowledge or information to form a belief as to the
12 allegations contained in Paragraph 235 of the Second Amended Complaint and therefore denies
13 the same.

14 236. GrubHub is without sufficient knowledge or information to form a belief as to the
15 allegations contained in Paragraph 236 of the Second Amended Complaint and therefore denies
16 the same.

17 237. GrubHub is without sufficient knowledge or information to form a belief as to the
18 allegations contained in Paragraph 237 of the Second Amended Complaint and therefore denies
19 the same.

20 238. GrubHub is without sufficient knowledge or information to form a belief as to the
21 allegations contained in Paragraph 238 of the Second Amended Complaint and therefore denies
22 the same.

23 239. GrubHub is without sufficient knowledge or information to form a belief as to the
24 allegations contained in Paragraph 239 of the Second Amended Complaint and therefore denies
25 the same.

26 240. GrubHub is without sufficient knowledge or information to form a belief as to the
27 allegations contained in Paragraph 240 of the Second Amended Complaint and therefore denies
28 the same.

1 241. GrubHub is without sufficient knowledge or information to form a belief as to the
2 allegations contained in Paragraph 241 of the Second Amended Complaint and therefore denies
3 the same.

4 242. GrubHub is without sufficient knowledge or information to form a belief as to the
5 allegations contained in Paragraph 242 of the Second Amended Complaint and therefore denies
6 the same.

7 243. GrubHub is without sufficient knowledge or information to form a belief as to the
8 allegations contained in Paragraph 243 of the Second Amended Complaint and therefore denies
9 the same.

10 244. GrubHub is without sufficient knowledge or information to form a belief as to the
11 allegations contained in Paragraph 244 of the Second Amended Complaint and therefore denies
12 the same.

13 245. GrubHub is without sufficient knowledge or information to form a belief as to the
14 allegations contained in Paragraph 245 of the Second Amended Complaint and therefore denies
15 the same.

16 246. GrubHub is without sufficient knowledge or information to form a belief as to the
17 allegations contained in Paragraph 246 of the Second Amended Complaint and therefore denies
18 the same.

19 247. GrubHub denies that Ameranth is entitled to the requested relief.

20 WHEREFORE, GrubHub prays for judgment as follows: (i) that Ameranth take nothing
21 by reason of the Second Amended Complaint, that the Second Amended Complaint be dismissed
22 in its entirety with prejudice, and that judgment be entered for GrubHub; (ii) that GrubHub be
23 awarded their reasonable costs and attorneys' fees, pursuant to statute; and (iii) that GrubHub be
24 awarded any such other and further relief as this Court deems just and proper.

25 **DEMAND FOR JURY**

26 GrubHub also requests a trial by jury.

27 **DENIAL OF ANY REMAINING ALLEGATIONS**

28 Except as specifically admitted herein, GrubHub denies any allegations in Ameranth's

Second Amended Complaint that are directed at them.

AFFIRMATIVE DEFENSES

Further answering the Second Amended Complaint, GrubHub asserts the following defenses in response to the allegations of the Second Amended Complaint, undertaking the burden of proof only as required by law, regardless of how such defenses are denominated herein.

FIRST DEFENSE

(No Infringement)

1. GrubHub has not infringed and currently does not infringe any valid claim of U.S. Patent No. 6,384,850 ("850 Patent") or U.S. Patent No. 6,871,325 ("325 Patent") directly, indirectly, contributory, by inducement, under the doctrine of equivalents, or in any other manner.

SECOND DEFENSE

(Invalidity)

2. The claims of the 850 Patent and 325 Patent are invalid, unenforceable and void at least, for failure to meet the conditions for Patentability set forth in the Patent Act of 1952 and more particularly, failure to comply with one or more of the requirements of 35 U.S.C. §§ 101, 102, 103, 111, 112, 115, 116, and/or 118 thereof, and/or for failure to identify all of the contributing inventors.

THIRD DEFENSE

(No Knowledge)

3. Ameranth has failed to state an essential element for an indirect infringement claim, as it has failed to allege with specificity that GrubHub had actual knowledge of the 850 Patent and 325 Patent prior to GrubHub's alleged infringement thereof.

FOURTH DEFENSE

(Lack of Direct Infringer)

4. Ameranth has failed to state an essential element for an indirect infringement claim, as it has failed to allege with specificity a direct infringer for its indirect infringement claim of the 850 Patent and 325 Patent prior to GrubHub's alleged infringement thereof.

///

FIFTH DEFENSE

(Lack of Intent)

5. Ameranth has failed to state an essential element for an indirect infringement claim as it has failed to allege that GrubHub had a specific intent to induce direct infringement of the 850 Patent and 325 Patent prior to GrubHub's alleged infringement thereof.

SIXTH DEFENSE

(Substantial Non-Infringing Uses)

6. GrubHub's products and services are not specially made or adapted to infringe the 850 Patent and 325 Patent.

SEVENTH DEFENSE

(Failure to Disclaim Invalid Claims Prior to Commencement)

7. The claims for damages based on infringement of the 850 Patent and 325 Patent are statutorily barred by 35 U.S.C. § 288 for failure of Ameranth to disclaim claims of the 850 Patent and 325 Patent prior to commencing the present suit.

EIGHTH DEFENSE

(Invalidity based on Anticipation)

8. Some or all of the claims of Ameranth's patents are invalid as anticipated by prior art.

NINTH DEFENSE

(Invalidity based on Obviousness)

9. Some or all of the claims of Ameranth's patents are invalid because one or more of the methods they claim would have been obvious at the time of alleged invention to a person of ordinary skill in the art as set forth in 35 U.S.C. § 103(a).

TENTH DEFENSE

(Failure to Enter Disclaimer)

10. Claims 1 and 4 of the 850 Patent were found invalid by jury trial in Ameranth v. Menusoft Sys. Corp., et. al., No 2:07-cv-00271-TJW-CE, in the U.S. District Court for the Eastern District of Texas ("The First Menusoft Action"). See First Menusoft Action, Jury's

1 Verdict, Dkt. No. 263 at 5-6. Claims 6, 9, and 10 of the 325 Patent were found invalid by jury
2 trial in the First Menusoft Action. *Id.* Pursuant to 35 U.S.C. § 288, Ameranth is precluded from
3 recovering any costs in this action because it failed to enter a disclaimer of the invalid claims at
4 the U.S. Patent and Trademark Office before the commencement of this action, including those
5 claims found invalid in the First Menusoft Action.

6 **ELEVENTH DEFENSE**

7 **(Failure to Meet 35 U.S.C. § 286)**

8 11. By reason of Ameranth's failure to meet the requirements of § 286, Ameranth is
9 precluded from seeking damages from GrubHub for any and all alleged infringement prior to the
10 complaint.

11 **TWELFTH DEFENSE**

12 **(Failure to Meet 35 U.S.C. § 287)**

13 12. By reason of Ameranth's failure to meet the requirements of § 287, Ameranth is
14 precluded from seeking damages from GrubHub for any and all alleged infringement prior to the
15 First Amended Complaint.

16 **THIRTEENTH DEFENSE**

17 **(Invalidity Based on Failure to Comply with 35 U.S.C. § 112)**

18 13. Some of or all of Ameranth's patents are invalid based on a failure to comply with
19 the written description, enablement, best mode, and definiteness requirements of 35 U.S.C. § 112.

20 **FOURTEENTH DEFENSE**

21 **(Doctrine of Unclean Hands)**

22 14. Upon information and belief, Ameranth's Second Amended Complaint, and each
23 and every claim for relief therein, are barred in whole or in part because Ameranth has not
24 behaved equitably, comes to this Court with unclean hands, and should therefore be denied all
25 relief.

26 **FIFTEENTH DEFENSE**

27 **(Waiver)**

28 15. Upon information and belief, Ameranth's Second Amended Complaint, and each

1 and every claim for relief therein, are barred in whole or in part by the doctrine of waiver.

2 **SIXTEENTH DEFENSE**

3 **(Laches)**

4 16. Upon information and belief, Ameranth's Second Amended Complaint, and each
5 and every claim for relief therein, are barred in whole or in part under the doctrine of laches.

6 **SEVENTEENTH DEFENSE**

7 **(Inequitable Conduct)**

8 16. GrubHub is informed and believes and on that basis alleges that the claims of the
9 patents-in-suit are invalid due to plaintiff's inequitable conduct in procuring the patents.

10 17. All claims of the of the 850 and the 325 Patents are unenforceable due to
11 inequitable conduct of Keith McNally ("McNally"), a named inventor and officer of Ameranth.

12 18. For example, McNally had knowledge of the TransPad, a product of Ameranth's
13 which is prior art to the 850 and the 325 Patents. The TransPad was not disclosed as prior art in
14 the application or during the prosecution of the 850 or the 325 Patents.

15 19. The Transpad is relevant to multiple limitations of the '850 and '325 patents, such
16 as, for example, "An information management synchronous communications system", which is
17 present in the preamble of claims 1 and 12 of the '850 patent and claims 1, 8, 9, and 11-13 of the
18 '325 patent; "at least one wireless handheld computing device on which hospitality applications
19 and data are stored" which is present in claim 12 of the '850 patent and claim 11-13 of the '325
20 patent, and "wherein applications and data are synchronized between the central data base, at
21 least one wireless handheld computing device, at least one Web server and at least one Web
22 page" which is present in claim 12 of the '850 patent and claims 11-13 of the '325 patent. The
23 Transpad and its resultant literature fully discloses all of these limitations.

24 20. For example, McNally had knowledge that the TransPad was a wireless device
25 designed to work inside a hospitality environment and designed to synchronize hospitality data,
26 (e.g., menus), between itself and a central database and other client devices, and that the feature
27 of synchronizing hospitality data on a wireless device with other clients was critical to the
28 issuance of the 850 Patent and its child, the 325 Patent. The TransPad was a product that

1 McNally assisted in developing and commercializing. McNally had detailed knowledge of the
2 workings of the TransPad and the systems in which it was deployed and despite this detailed
3 knowledge, he did not disclose the TransPad to the PTO.

4 21. McNally was aware the TransPad was prior art to the 850 and 325 Patents during
5 the prosecution both patents. However, knowing his patents would not have issued if he had
6 disclosed it to the PTO, failed to so disclose it. McNally intentionally, and with intent to deceive
7 the PTO, withheld TransPad from the PTO during the prosecution of the 850 and the 325 Patents
8 and thereby breached his duty of good faith and candor in dealing with the PTO under 37 CFR
9 1.56.

10 22. For the reasons specified in Defendants' Preliminary Invalidity Contentions served
11 on Ameranth on June 18, 2012 (attached hereto as Exhibit 1), and in particular the reasons set
12 forth in pages 539-567 of Exhibit A thereto (attached hereto as Exhibit 2), the 850 and the 325
13 Patents would not have issued if TransPad had been disclosed during the prosecution of the 850
14 and 325 Patents. Accordingly, the 850 and the 325 Patents are unenforceable due to McNally's
15 inequitable conduct during the prosecution of the 850 and the 325 Patents.

16 **EIGHTEENTH DEFENSE**

17 **(Failure to State a Claim)**

18 23. Ameranth's Second Amended Complaint fails to state a claim against GrubHub
19 upon which relief may be granted against GrubHub and therefore, such claims should be
20 dismissed, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

21 **NINETEENTH DEFENSE**

22 **(Adequate Remedy at Law)**

23 24. Ameranth is not entitled to injunctive relief because any alleged injury is not
24 immediate or irreparable, and Ameranth has an adequate remedy at law for any claims it can
25 prove.

26 **TWENTIETH DEFENSE**

27 **(Estoppel)**

28 25. Ameranth is estopped from construing a valid claim, if any, of the 850 Patent or

1 325 Patent to be infringed literally or under the Doctrine of Equivalents due to admissions or
2 statements made (a) on behalf of Ameranth, applicant, during the prosecution of the 850 Patent
3 and 325 Patent before the U.S. Patent and Trademark Office, respectively (b) in the specification
4 and claims of the 850 Patent and 325 Patent, respectively, and/or (c) during prior litigation related
5 to the 850 Patent and 325 Patent, respectively.

6 **TWENTY-FIRST DEFENSE**

7 **(Patent Misuse)**

8 26. On information and belief, GrubHub asserts that a reasonable opportunity for
9 discovery will show that the “850 Patent and 325 Patent were obtained and are being exploited
10 and used in an improper manner, thereby the 850 Patent and 325 Patent are invalid for Patent
11 misuse.

12 **TWENTY-SECOND DEFENSE**

13 **(Improper Joinder)**

14 27. GrubHub has been improperly joined into a single action with a myriad of other
15 defendants who do not share, use, buy, sell, offer to sell or have any connection whatsoever with
16 GrubHub, its products and its services. But for the fact that Ameranth named GrubHub in its
17 First Amended complaint immediately prior to the enactment of the America Invents Act of 2012,
18 GrubHub would have been statutorily barred from being a part of this action.

19 **TWENTY-THIRD DEFENSE**

20 **(Lack of Standing)**

21 28. Ameranth’s claims are barred due to lack of standing and/or lack of ownership to
22 the extent Ameranth’s allegations extend beyond the patent rights owned by Ameranth.

23 **TWENTY-FOURTH DEFENSE**

24 **(Statutory Limitation on Damages and Costs)**

25 29. Ameranth’s claims for damages and costs, if any, are statutorily limited by 35
26 U.S.C. §§ 286, 287, and 288.

27 **TWENTY-FIFTH DEFENSE**

28 **(Equitable and Injunctive Relief Improper)**

30. Ameranth has failed to state facts and/or legal basis sufficient to permit the Court to grant equitable or injunctive relief against GrubHub.

TWENTY-SIXTH DEFENSE

(Reservation of Rights)

31. GrubHub presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. GrubHub reserves the right to assert additional defenses in the event that discovery indicates it would be appropriate.

COUNTERCLAIMS

Further, Defendant/Counter-Claimant GRUBHUB, INC. ("GrubHub") alleges the following against Plaintiff/Counter-Defendant Ameranth, Inc. ("Ameranth"):

PARTIES

1. Grubhub is a Delaware corporation and has a principle place of business at 2211 N. Elston Avenue, Suite 400, Chicago, IL 60614.

2. Ameranth is, upon information and belief, a Delaware corporation, having a principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, CA 92121. Ameranth has brought this civil action in the United States District Court for the Southern District of California availing itself of jurisdiction of this Court.

JURISDICTION AND VENUE

3. This Court has jurisdiction over GrubHub's counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. There is a present and existing controversy concerning the infringement and/or validity of the Patents-in-suit as set forth in the Second Amended Complaint and in the foregoing Answer and Affirmative Defenses to which this counterclaim is appended.

4. This Court has personal jurisdiction over Ameranth because it has purposefully availed itself of the benefits and laws of this jurisdiction, including filing the instant action.

5. Venue is proper under 28 U.S.C. §§ 1391 (b) and (c).

6. Ameranth purports to own the 850 Patent and 325 Patent and has accused GrubHub of infringing those Patents.

1 19. For example, claim 12 of the 850 Patent and claims 11-13 of the 325 Patent
2 require “a communications control module”.

3 20. GrubHub does not make, use, sell, or offer for sale “a communications control
4 module”.

5 21. For example claim 12 of the 850 Patent and claims 11-13 of the 325 Patent require
6 “wherein applications and data are synchronized between the central data base, at least one
7 wireless handheld computing device, at least one Web server and at least one Web page”.

8 22. GrubHub does not make, use, sell, or offer for sale “wherein applications and data
9 are synchronized between the central data base, at least one wireless handheld computing device,
10 at least one Web server and at least one Web page”.

11 23. For example claim 12 of the 850 Patent and claims 11-13 of the 325 Patent require
12 “wherein the communications control module is an interface between the hospitality applications
13 and any other communications protocol”.

14 24. GrubHub does not make, use, sell, or offer for sale “wherein the communications
15 control module is an interface between the hospitality applications and any other communications
16 protocol”.

17 25. GrubHub has not infringed and is not infringing, either literally or under the
18 Doctrine of Equivalents, directly or indirectly, by inducement or contribution, any valid and
19 enforceable claim of the 850 or the 325 Patent.

20 26. As GrubHub has not infringed and is not infringing any valid and enforceable
21 claim of the 850 or the 325 Patent, GrubHub has not willfully infringed and is not willfully
22 infringing any valid and enforceable claim of 850 or the 325 Patent.

23 27. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,
24 GrubHub requests the Court declare that GrubHub does not infringe the 850 and the 325 Patents.

25 **SECOND COUNTER-CLAIM**

26 **(Declaration of Patent Invalidity of the 850 and 325 Patents)**

27 28. GrubHub repeats and incorporates by reference the allegations in counterclaim
28 paragraphs 1 through 27 above as though fully set forth herein.

1 29. Based on Ameranth's filing of this action and GrubHub's affirmative defenses, an
2 actual controversy has arisen and now exists between Ameranth and GrubHub as to the validity of
3 the claims of the 850 and the 325 Patents.

4 30. The claims of the 850 and the 325 Patents are invalid because the specifications
5 for the 850 and the 325 Patents do not satisfy one or more of the written description, enablement,
6 best mode, and definiteness requirements of 35 U.S.C. §§ 112 for the reasons specified in
7 Defendants' Preliminary Invalidity Contentions served on Ameranth on June 18, 2012, attached
8 hereto as Exhibit 1.

9 31. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,
10 GrubHub requests the Court declare that the 850 and the 325 Patents are invalid, unenforceable
11 and void.

12 **THIRD COUNTER-CLAIM**

13 **(Declaration of Invalidity of the 850 and 325 Patents)**

14 32. GrubHub repeats and incorporates by reference the allegations in counterclaim
15 paragraphs 1 through 31 above as though fully set forth herein.

16 33. Based on Ameranth's filing of this action and GrubHub's affirmative defenses, an
17 actual controversy has arisen and now exists between Ameranth and GrubHub as to the validity of
18 the claims of the 850 and the 325 Patents.

19 34. The claims of the 850 and the 325 Patents are invalid because the asserted claims
20 of the 850 and the 325 Patents are taught in one or more single prior references and/or by a single
21 prior art system, and are, therefore, invalid as anticipated for the reasons specified in Defendants'
22 Preliminary Invalidity Contentions served on Ameranth on June 18, 2012, attached hereto as
23 Exhibit 1.

24 35. For example, under the constructions that Ameranth is apparently taking in this
25 case, each and every element of the asserted claims of the 850 and the 325 Patents are taught by
26 U.S. Pat. No. 7,069,228 ("Rose"), issued June 27, 2006 and titled "Apparatus and Method for an
27 Internet Based Computer Reservation Booking System". A true and correct copy of Rose is
28 attached hereto as Exhibit 3. Rose is prior art to the 850 and the 325 Patents.

36. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, GrubHub requests the Court declare that the 850 and the 325 Patents are invalid, unenforceable and void as anticipated under 35 U.S.C. § 102.

FOURTH COUNTER-CLAIM

(Declaration of Invalidity of the 850 and 325 Patents)

37. GrubHub repeats and incorporates by reference the allegations in counterclaim paragraphs 1 through 36 above as though fully set forth herein.

38. Based on Ameranth's filing of this action and GrubHub's affirmative defenses, an actual controversy has arisen and now exists between Ameranth and GrubHub as to the validity of the claims of the 850 and the 325 Patents.

39. The claims of the 850 and the 325 Patents are invalid because the asserted claims of the 850 and the 325 Patents are invalid as one of ordinary skill in the art would have found them obvious at the time of alleged invention. *See* 35 U.S.C. § 103 for the reasons specified in Defendants' Preliminary Invalidity Contentions served on Ameranth on June 18, 2012.

40. For example, the "Transpad" is prior art to the 850 and the 325 Patents. A true and correct copy of a publication describing the TransPad is attached hereto as Exhibit 4.

41. The claims of the 850 and 325 patents would have been obvious to one of ordinary skill in the art, for example, through a combination of one or more of TransPad, Rose, or other prior art references, such as those mentioned in Defendants Preliminary Invalidity Contentions served on Ameranth on June 18, 2012, attached hereto as Exhibit 1.

42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, GrubHub requests the Court declare that the 850 and the 325 Patents are invalid, unenforceable and void as obvious under 35 U.S.C. § 103(a).

FIFTH COUNTER-CLAIM

(Exceptional Case)

43. GrubHub repeats and incorporates by reference the allegations in counterclaim paragraphs 1 through 42 above as though fully set forth herein.

44. Ameranth has asserted claims that are similar to many of the claims at issue in this

1 case in cause no. 2:07-CV-00271, where all of its asserted claims were judged to be invalid after a
 2 jury trial.

3 45. Ameranth knew, or should have known, that the claims of the 850 and the 325
 4 Patents were not infringed by GrubHub, were invalid under the requirements of the U.S. Patent
 5 Laws, including but not limited to 35 U.S.C. §§ 102, 103 and 112 when this lawsuit was
 6 commenced, and/or were unenforceable.

7 46. The pursuit of Ameranth's claims against GrubHub is unjustified.

8 47. This is an exceptional case within the meaning of 35 U.S.C. § 285.

9 **SIXTH COUNTERCLAIM**

10 **(Inequitable Conduct)**

11 48. GrubHub is informed and believes and on that basis alleges that the claims of the
 12 patents-in-suit are invalid due to plaintiff's inequitable conduct in procuring the patents.

13 49. All claims of the of the 850 and the 325 Patents are unenforceable due to
 14 inequitable conduct of Keith McNally ("McNally"), a named inventor and officer of Ameranth.

15 50. For example, McNally had knowledge of the TransPad, a product of Ameranth's
 16 which is prior art to the 850 and the 325 Patents. The TransPad was not disclosed as prior art in
 17 the application or during the prosecution of the 850 or the 325 Patents.

18 51. The Transpad is relevant to multiple limitations of the '850 and '325 patents, such
 19 as, for example, "An information management synchronous communications system", which is
 20 present in the preamble of claims 1 and 12 of the '850 patent and claims 1, 8, 9, and 11-13 of the
 21 '325 patent; "at least one wireless handheld computing device on which hospitality applications
 22 and data are stored" which is present in claim 12 of the '850 patent and claim 11-13 of the '325
 23 patent, and "wherein applications and data are synchronized between the central data base, at
 24 least one wireless handheld computing device, at least one Web server and at least one Web
 25 page" which is present in claim 12 of the '850 patent and claims 11-13 of the '325 patent. The
 26 Transpad and its resultant literature fully discloses all of these limitations.

27 52. For example, McNally had knowledge that the TransPad was a wireless device
 28 designed to work inside a hospitality environment and designed to synchronize hospitality data,

1 (e.g., menus), between itself and a central database and other client devices, and that the feature
2 of synchronizing hospitality data on a wireless device with other clients was critical to the
3 issuance of the 850 Patent and its child, the 325 Patent. The TransPad was a product that
4 McNally assisted in developing and commercializing. McNally had detailed knowledge of the
5 workings of the TransPad and the systems in which it was deployed and despite this detailed
6 knowledge, he did not disclose the TransPad to the PTO.

7 53. McNally was aware the TransPad was prior art to the 850 and 325 Patents during
8 the prosecution both patents. However, knowing his patents would not have issued if he had
9 disclosed it to the PTO, failed to so disclose it. McNally intentionally, and with intent to deceive
10 the PTO, withheld TransPad from the PTO during the prosecution of the 850 and the 325 Patents
11 and thereby breached his duty of good faith and candor in dealing with the PTO under 37 CFR
12 1.56.

13 54. For the reasons specified in Defendants' Preliminary Invalidity Contentions served
14 on Ameranth on June 18, 2012 (attached hereto as Exhibit 1), and in particular the reasons set
15 forth in pages 539-567 of Exhibit A thereto (attached hereto as Exhibit 2), the 850 and the 325
16 Patents would not have issued if TransPad had been disclosed during the prosecution of the 850
17 and 325 Patents. Accordingly, the 850 and the 325 Patents are unenforceable due to McNally's
18 inequitable conduct during the prosecution of the 850 and the 325 Patents.

19 WHEREFORE, GrubHub prays for the following relief:

- 20 (i) Ameranth's Second Amended Complaint be dismissed with prejudice and that
21 Ameranth take nothing by its claims;
- 22 (ii) judgment be entered in favor of GrubHub and against Ameranth on all claims in
23 the Second Amended Complaint;
- 24 (iii) that GrubHub be adjudged and declared not to have infringed any valid claim of
25 the the 850 Patent or the 325 Patent;
- 26 (iv) that the asserted claims of the 850 Patent and 325 Patent be declared invalid;
- 27 (v) that the asserted claims of the 850 Patent and 325 Patent be declared
28 unenforceable;

- 1 (vi) that Ameranth, its assigns, and all those in privity therewith be enjoined from
2 asserting the 850 Patent and 325 Patent against GrubHub or any of its customers or
3 suppliers;
4 (vii) that this case be found to be exceptional and that GrubHub be awarded attorney's
5 fees and costs (including expert fees) under 35 U.S.C. § 285; and
6 (viii) such other and further relief in favor of GrubHub as the Court may deem just and
7 proper.
8

9 DATED: July 17, 2011.

ROBERTSON & ASSOCIATES, APC

10 By: s/Les W. Robertson

11 Les W. Robertson
12 655 West Broadway, Suite 1410
13 San Diego, CA 92101
14 Tel: (619) 531-7000 Fax: (619) 531-7007
15 Attorneys for GRUBHUB, INC.
16
17
18
19
20
21
22
23
24
25
26
27
28